IN THE SUPREME COURT OF WISCONSIN

No. 2023AP1399-OA

REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA GLASSTEIN, ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE KIRST, SELIKA LAWTON, FABIAN MALDONADO, ANNEMARIE MCCLELLAN, JAMES MCNETT, BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS, NATHANIEL SLACK, MARY SMITH-JOHNSON, DENISE (DEE) SWEET, AND GABRIELLE YOUNG,

Petitioners,

GOVERNOR TONY EVERS, IN HIS OFFICIAL CAPACITY; NATHAN ATKINSON, STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J. HAMILTON, JEAN-LUC THIFFEAULT, SOMESH JHA, JOANNE KANE, AND LEAH DUDLEY,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, DON MILLIS, ROBERT F. SPINDELL, JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND CARRIE RIEPL, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION, MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION; ANDRÉ JACQUE, TIM CARPENTER, ROB HUTTON, CHRIS LARSON, DEVIN LEMAHIEU, STEPHEN L. NASS, JOHN JAGLER, MARK SPREITZER, HOWARD L. MARKLEIN, RACHAEL CABRAL-GUEVARA, VAN H. WANGGAARD, JESSE L. JAMES, ROMAINE ROBERT QUINN, DIANNE H. HESSELBEIN, CORY TOMCZYK, JEFF SMITH, AND CHRIS KAPENGA, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN SENATE,

Respondents,

WISCONSIN LEGISLATURE; BILLIE JOHNSON, CHRIS GOEBEL, ED PERKINS, ERIC O'KEEFE, JOE SANFELIPPO, TERRY MOULTON, ROBERT JENSEN, RON ZAHN, RUTH ELMER, AND RUTH STRECK,

Intervenors-Respondents.

WRIGHT PETITIONERS' BRIEF IN SUPPORT OF THE WRIGHT MAP

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is warranted in this matter under the standards in Wis. Stat. § (Rule) 809.22.

Publication is proper under the standards in Wis. Stat. § (Rule) 809.23(1) because the issues raised here are of statewide import and will provide guidance relevant to future decennial redistricting and litigation.

INTRODUCTION

As this Court has held, "the contiguity requirements in Article IV, Sections 4 and 5 mean what they say: Wisconsin's state legislative districts must be composed of physically adjoining territory." *Clarke v. Wis. Elections Comm'n*, 2023 WI 79, __ N.W.2d __, 2023 WL 8869181 ("Op."). Accordingly, the remedial proposal the Wright Petitioners[1] present to the Court ("the Wright Map") first and foremost cures the pervasive problems with unconstitutional noncontiguity in the current map ("the 2022 Map"). All but four of the 2022 Map's senate districts (and their corresponding twelve assembly districts) contained noncontiguous municipal wards. The Wright Petitioners were able to fully cure the constitutional violations without redrawing those four districts.

The Court also recognized that although it was enjoining the Wisconsin Elections Commission's use of the 2022 Map because the bulk of its districts were noncontiguous, "this [C]ourt must consider other districting requirements, in addition to contiguity, when adopting remedial maps," the first of which is compliance with all applicable provisions of state and federal law. Op. ¶59. Accordingly, when remedying the contiguity violations, the Wright Petitioners ensured compliance with state and federal requirements on population equality and minority electoral opportunity, as well as state requirements that districts be bounded by county, town, or ward lines, be in as compact a form as practicable, and meet the numbering and nesting criteria. The Court noted that it would also consider other traditional districting principles, including reducing municipal splits and

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[1] Following this Court's December 22 decision, *see* Op. ¶2 & n.3, Intervenors-Petitioners Stephen Joseph Wright, Gary Krenz, Sarah J. Hamilton, Jean-Luc Thiffeault, Somesh Jha, Joanne Kane, Leah Dudley, and Nathan Atkinson refer to themselves here as the "Wright Petitioners." Previous filings had referred to them as the "Atkinson Intervenors."

preserving communities of interest. Op. ¶68. The Wright Map thus minimizes splits and, as is more fully set forth in the accompanying expert report of Dr. Ryan Weichelt, Chair of the Geography and Anthropology Department at the University of Wisconsin–Eau Claire, the Wright Map fully respects communities of interest.

Finally, in accordance with both state and federal precedent, the Court recognized that its remedy must be "politically neutral" and avoid "privileg[ing] one political party over another." Op. ¶70. The Wright Map treats all Wisconsin voters equitably without regard to political viewpoint or partisan affiliation. As explained in the accompanying report of Dr. Daryl R. DeFord, one of the Nation's foremost experts on computational redistricting, the Wright Map implements the basic promise of majority rule—that the party whose legislative candidates receive the majority of votes statewide should hold the majority of seats in the Legislature. For more than a century, this Court has recognized that legislative districting should achieve "equality of representation" for all Wisconsinites. *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 148–49, 53 N.W. 35, 57 (1892). The Wright Map gives the Court the means to deliver on that promise to all Wisconsin citizens.

BACKGROUND

I.   **The Court Appropriately Ordered All Parties to Provide Proposed Maps to Remedy the Constitutional Violations.**

In August 2023, the Clarke Petitioners filed a petition for leave to commence an original action challenging the 2022 legislative map adopted in *Johnson v. Wisconsin Elections Commission*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 ("*Johnson III*"), as, *inter alia*, failing to comply with the Wisconsin Constitution's contiguity and separation-of-powers requirements. This Court granted the petition with respect to those claims,

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permitted intervention by all parties who timely sought to intervene (including Wright Petitioners), ordered two rounds of simultaneous briefing on the merits of the petition, and held oral argument.

On December 22, 2023, this Court issued an opinion and an order governing future proceedings. *See* Op. ¶¶1–77; Order, *Clarke v. Wis. Elections Comm'n*, No. 2023AP1399-OA (Wis. Dec. 22, 2023) ("Remedial Order"). On the merits, the Court concluded that the contiguous-territory requirements enshrined in the Wisconsin Constitution require "touching" or "actual contact" between the physical geography of a district, "such that a person could travel from one point in the district to any other point in the district without crossing district lines." Op. ¶16. Because at least 50 assembly districts and at least 20 senate districts "contain[ed] separate, detached territory," the Court held that the 2022 Map "violate[s] the constitution's contiguity requirements." *Id.* ¶3. Given these extensive state constitutional violations, the Court "enjoin[ed] the Wisconsin Elections Commission from using the current legislative maps in future elections." *Id.*

The Court then set forth a process to govern the adoption of a valid remedial map if the legislative process fails to produce one. That process accords all parties the "opportunity to submit remedial legislative district maps to the court, along with expert evidence and an explanation of how their maps comport with the principles laid out" in the Court's opinion. *Id.* ¶75; *see also* Remedial Order at 2–3. The parties are also accorded the "opportunity to respond to each other." Op. ¶75. And the Court appointed Dr. Bernard Grofman and Dr. Jonathan Cervas as consultants to "aid in evaluating the remedial maps" by preparing a report to which the parties will also be permitted to respond. *Id.*; *see also* Remedial Order at 3–4 (outlining requirements for consultants' report and response briefs to the

consultants' report). On December 26, the consultants identified technical specifications and necessary data to be submitted with each party's proposed remedial map and supporting materials. Today's filing presents the Wright Map, the accompanying expert reports of Dr. DeFord and Dr. Weichelt, and all supporting data and inputs that the Wright Petitioners' experts used in their remedial analyses.[2]

II.   The Wright Petitioners Have Proposed a Remedial Map that Benefits from the Power of Computational Redistricting.

The Wright Petitioners include some of Wisconsin's leading mathematicians, data scientists, and computer scientists. Drawing on their expert team, they generated the Wright Map with the assistance of "computational redistricting"—the use of high-performance computers to generate and evaluate maps that attempt to optimally comply with multiple redistricting criteria simultaneously.

The premise behind computational redistricting is simple: "[G]ood maps are needles in a haystack of bad or at least worse maps. Enter redistricting algorithms. They are capable of meticulous exploration of the astronomical number of ways in which a state can be partitioned. They can identify possible configurations of districts and zero in on the maps that best meet the redistricting criteria. The algorithms sort through the haystack more efficiently and more systematically so that the needle—the better maps—can be found."[3] In this way, a "computer program essentially

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[2] As such, the materials produced today satisfy all the production obligations set forth in the Court's Remedial Order, including with respect to both the Court's January 12 and January 15 deadlines. *See* Remedial Order at 2–3.

[3] Emily Rong Zhang, *Bolstering Faith with Facts: Supporting Independent Redistricting Commissions with Redistricting Algorithms*, 109 CALIF. L. REV. 987, 1012–13 (2021) (internal quotation marks and footnotes omitted).

substitutes for a very large body of neutral experts and the viable, neutral maps they draw."[4]

The use of algorithms to generate and evaluate redistricting plans dates back a half century, but it is only in the past decade that the field of computational redistricting has come to the fore as advances in computing power have greatly increased line-drawers' abilities to evaluate and potentially mitigate the inevitable tradeoffs among redistricting criteria. Redistricters know that improving a district's performance on one criterion often creates "downstream consequences" for the district's compliance with other criteria.[5] Remedying contiguity violations, for example, inevitably impacts districts' degree of population equality, compactness, respect for political-subdivision lines, and preservation of communities of interest.

The traditional way to find the right balance has been through trial and error, with a mapmaker using pencil and paper, or commercial software and a mouse, to manually move existing district lines one at a time. But drawing maps this way is both time-consuming and deeply limiting. Indeed, a single decision in the map-drawing process can have "implications for the rest of the map that even seasoned line-drawers cannot always fully account for or predict."[6] Computational redistricting changes that. The advanced computing and algorithmic optimization techniques involved in computational redistricting can quickly sort through millions of alternatives to "zero in on the maps that best meet the redistricting criteria."[7]

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[4] Bruce E. Cain et al., *A Reasonable Bias Approach to Gerrymandering: Using Automated Plan Generation to Evaluate Redistricting Proposals*, 59 WM. & MARY L. REV. 1521, 1536–37 (2018).

[5] Zhang, *supra* note 3, at 1013.

[6] *Id.*

[7] *Id.*

Importantly, computational redistricting and its algorithmic techniques are not just a way to generate maps; they also help evaluate maps. One of the Wright Petitioners' experts, Dr. DeFord, is among the Nation's leading computational-redistricting experts and is especially skilled in performing exactly this function. In just the past two years, his work has been cited and relied on by both the U.S. Supreme Court and the Pennsylvania Supreme Court. In adopting Pennsylvania's 2022 congressional redistricting plan, the latter court "rel[ied] upon the analyses performed by Dr. Daryl DeFord, which evaluate[d] all of the submitted plans using the same methods and data sets," and expressed the court's appreciat[ion for] Dr. DeFord's efforts in this regard as it allows the Court to engage in an apples-to-apples comparison of the plans on each metric." *Carter v. Chapman*, 270 A.3d 444, 462–63 (Pa.), *cert. denied*, 143 S. Ct. 102 (2022); *see also id.* at 473 (Donohoe, J., concurring) (noting that because Dr. DeFord "reconciled the data set and methodologies used by the various experts," his analysis "forms a reliable basis to rank the predicted partisan fairness of the submissions"); *id.* at 493 n.4 (Todd, J., dissenting) (noting that, like "the majority, I rely on the comprehensive comparison of Dr. Daryl DeFord of all of the plans which have been submitted to our Court").

The U.S. Supreme Court likewise relied on an amicus brief submitted by Dr. DeFord and other computational-redistricting experts in the recent Alabama redistricting case, *Allen v. Milligan*, 599 U.S. 1 (2023). The Court quoted Dr. DeFord's brief for the proposition that "'[q]uantifying, measuring, prioritizing, and reconciling [redistricting] criteria' requires map drawers to 'make difficult, contestable choices.'" *Id.* at 35 (quoting Brief for Computational Redistricting Experts as *Amici Curiae*). Indeed, in his dissent, Justice Alito observed that the majority based a key part of its

opinion, regarding "a complicated statistical issue" involving "[c]omputer simulations," "solely" on Dr. DeFord's amicus brief. *Id.* at 107 (Alito, J., dissenting) (internal citation omitted).

The Wright Petitioners offer their Wright Map and the analysis of Dr. DeFord in the hope that the Court will recognize the benefits of computational redistricting, and in particular its ability to offer neutral, scientific methods for both generating and evaluating remedial maps.

ARGUMENT

The Wright Map completely cures the violations of unconstitutional noncontiguity identified by the Court while also fully complying with all other mandatory state and federal constitutional and statutory criteria. In addition, the Wright Map performs extremely well on the nonmandatory criteria identified by the Court—respecting political subdivisions and communities of interest. Importantly, the Wright Map does all this in a manner that is politically neutral, so the Court can adopt a remedial map that does not put a thumb on the scale for either political party.

I.   The Wright Map Satisfies All Mandatory Districting Requirements Under State and Federal Law.

When adopting a remedy, the Court must "ensure that remedial maps comply with state and federal law." Op. ¶59. The Wright Map does exactly that, as it fully complies with all mandatory districting criteria required by the state and federal constitutions and statutes.

This Court has recognized that the constitutional requirements constraining redistricting "operate as a floor with space for mapmaker discretion" and therefore what matters is whether a proposed remedial map "meet[s] constitutional standards, not whether [it] perform[s] comparatively better or worse on these metrics" than other proposed maps. *Johnson v. Wis. Elections Comm'n*, 2022 WI 14, ¶¶34–35, 400 Wis. 2d 626,

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971 N.W.2d 402 (*Johnson II*), *summarily rev'd sub nom. Wis. Legis. v. Wis. Elections Comm'n,* 595 U.S. 398 (2022) (per curiam). So, the majority in *Johnson II* explained, rather than "scrutinize proposed maps to determine which are more compact or which contain the smallest population deviations," the Court asks "simply whether districts are sufficiently compact and sufficiently equal in population to comply with the constitution." *Id.* ¶35. As the Court has stated: "Proposed maps are either lawful or they are not; no constitutional map is more constitutional than another." *Id.* "[S]o long as a map complies with constitutional requirements, better performance on these metrics becomes commendable" as a matter of policy, "but not constitutionally required." *Id.*

A. The Wright Map's Districts Consist of Contiguous Territory.

As an initial matter, the Wright Map fully cures the constitutional violations of noncontiguity identified in the 2022 Map. Section 4 of Article IV of the Wisconsin Constitution mandates that assembly districts "consist of contiguous territory," and Section 5 likewise mandates senate "districts of convenient contiguous territory." Wis. Const. art. IV, §§ 4–5. As this Court explained, "for a district to be composed of contiguous territory, its territory must be touching such that one could travel from one point in the district to any other point in the district without crossing district lines." Op. ¶66; *see id.* ¶1 (critiquing a district "containing territory completely disconnected from the rest of the district"); *id.* ¶3 (holding that "Wisconsin's state legislative districts must be composed of physically adjoining territory" and enjoining elections in districts "contain[ing] separate, detached territory"). Thus, as the Court held, at least 50 assembly districts and at least 20 senate districts in the 2022 Map did not "consist of contiguous territory," in violation of the Wisconsin Constitution. *Id.* ¶¶1, 34, 56, 77.

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As the Court noted, districts in the 2022 Map were noncontiguous because they were built from municipal wards that are noncontiguous. *See* Op. ¶18 & n.9, ¶21 n.10. And noncontiguous municipal wards are present in nearly every part of the state. However, there are four current senate districts (and thus twelve assembly districts) that do not contain any noncontiguous municipal wards. Accordingly, the Wright Map left those four senate districts, as well as the twelve assembly districts nested within them, entirely untouched. These intact districts are Senate Districts 3, 4, 6, and 7, and Assembly Districts 7 through 12 and 16 through 21, all in Milwaukee County.[8]

Because the remaining 29 senate districts contained noncontiguous municipal wards, the Wright Map drew those districts to ensure that every district would consist of contiguous territory. Though some districts "span bodies of water" in Lake Superior or Green Bay, that does not violate Article IV's "contiguous territory" requirement. Op. ¶27.

As is further described in Dr. DeFord's expert report, the Wright Map fully cured the identified constitutional violations while leaving the four senate districts with no noncontiguous wards untouched. DeFord Rpt. 8.

B.   The Wright Map's Districts Satisfy the Population-Equality Requirement.

In remedying the violation of the state constitutional contiguity requirements, the Wright Map scrupulously satisfies all state and federal

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[8] Senate Districts 12 and 17 in the 2022 Map are contiguous but contain noncontiguous municipal wards, which this Court has recognized as the root of the problem the Constitution is aimed at policing. *See Chicago & Nw. Ry. Co. v. Town of Oconto*, 50 Wis. 189, 196, 6 N.W. 607, 609 (1880) (disallowing noncontiguous municipal annexations because they would generate town or ward lines that would "most unquestionably restrict the [State's] sovereign power" to organize "assembly districts 'consisting of contiguous territory'" (quoting Wis. Const. art. IV, § 4)). Accordingly, the Wright Map redraws these districts.

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constitutional requirements for population equality. As the Court explained, Article IV, Section 3 of the Wisconsin Constitution and the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution "require a state's population to be distributed equally amongst legislative districts with only minor deviations." Op. ¶64. Mathematically perfect population equality would require each assembly district to have 59,532.51 residents (5,893,718 divided by 99) and each senate district to have 178,597.52 residents. But this Court and others in Wisconsin and nationwide have routinely ordered into effect legislative maps whose districts have "minor deviations" from perfect mathematical equality. *See id.* (discussing cases).

Thus, as this Court noted, when a district's deviation from perfect equality is "'[b]elow 1 percent, there are no legally or politically relevant degrees of perfection.'" Op. ¶64 (quoting *Prosser v. Elections Board*, 793 F. Supp. 859, 866, 870 (W.D. Wis. 1992) (three-judge court)); *accord Baumgart v. Wendelberger*, Nos. 01-C-0121, 02-C-0366, 2002 WL 34127471, at *2 (E.D. Wis. May 30, 2002) (three-judge court) (reaffirming *Prosser*'s conclusion).

Courts therefore frequently cite a map's "maximum population deviation"—the population difference between the map's largest and smallest districts—and tolerate any maximum population deviation that is less than 2% of the average district's population, with no district deviating from the ideal by more than 1%, as this Court, the *Prosser* court, and the *Baumgart* court have held. *See supra.* Indeed, in *Johnson II*, the Court approved a maximum population deviation of 1.88%—a holding that this Court cited with approval in its December 22 decision. *See* Op. ¶64; *Johnson II*, 2022 WI 14, ¶36 (approving a map with an 1.88% maximum population deviation, "well under the deviations previously adopted by the legislature

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and those prescribed by this court" (citing authorities)); *see also Prosser*, 793 F. Supp. at 866.

As Dr. DeFord notes in his expert report, the Wright Map easily satisfies this standard. DeFord Rpt. 10. With the largest and smallest assembly districts both within 0.92% of perfect equality, the Wright Map's maximum population deviation is only 1.83%, *see id.*, well below the 2% threshold that Wisconsin courts have identified and below this Court's 1.88% precedent from two years ago. *See, e.g.*, Op. ¶64; *Johnson II*, 2022 WI 14, ¶36. And the Wright Map's maximum population deviation for senate districts is lower yet—only 1.19%, which again is less than this Court approved (for a senate map) in *Johnson II*, 2022 WI 14, ¶36. Thus, the state and federal constitutional requirements for population equality in a court-ordered legislative map are easily satisfied by the Wright Map. Dr. DeFord's expert report provides further detail, including a district-by-district enumeration of the differences between actual and ideal population, as requested by Dr. Grofman and Dr. Cervas. DeFord Rpt. App. C.1–C.2.

C.   The Wright Map's Districts Are Bounded by County, Town, or Ward Lines.

The Constitution also requires assembly "districts to be bounded by county, precinct, town or ward lines." Wis. Const. art. IV, § 4. The Wright Map fully complies with this requirement as every one of its assembly districts—and therefore its senate districts, too—is entirely bounded by county, town, or ward lines. As noted in Dr. DeFord's expert report, literally every inch of every district boundary in the Wright Map is sitting on top of a county line, a town line, or a ward line. DeFord Rpt. 11. That alone is enough to comply with the Constitution's plain text.

However, when applying this "bounded by" requirement, the Court historically has also "consider[ed] the extent to which assembly districts

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split counties, towns, and wards (particularly towns and wards as the smaller political subdivisions), although we no longer interpret the requirement to entirely prohibit any splitting of the enumerated political subdivisions, as we once did." Op. ¶66 (footnote omitted). Because six Wisconsin counties—Milwaukee, Dane, Waukesha, Brown, Racine, and Outagamie—have too many residents for one senate district, and another 19 counties have too many residents for one assembly district, some county splits are unavoidable today.

Within those constraints, however, the Wright Map excels at preserving counties, towns, and wards. The Wright Map's assembly districts split only 47 counties and 15 towns, while the senate districts split only 37 counties and 8 towns. And neither the assembly nor the senate districts split a single ward. As shown in Table 1 below, on this constitutionally mandated criterion the Wright Map thus compares favorably with other maps that have been court-ordered or implemented in recent decades, including the Legislature's 2011 Map, the Governor's 2022 Map adopted by the *Johnson II* Court, and the Legislature's 2022 Map adopted by the *Johnson III* Court.

Table 1: County and Town Splits

Map	Assembly				Senate			
	Counties		Towns		Counties		Towns	
	Splits	Number of Times Split	Splits	Number of Times Split	Splits	Number of Times Split	Splits	Number of Times Split
Wright Map	47	153	15	17	37	74	8	10
2022 Map	53	159	16	16	42	73	8	8
2022 Gov. Map	53	177	50	64	45	92	32	35
2011 Map	58	171	30	34	46	84	18	20

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The Constitution's "bounded by" requirement makes no mention of cities and villages, but reducing the extent to which districts split those types of municipalities has been considered a nonmandatory traditional districting criterion. The Wright Petitioners therefore present below the statistics as to the Wright Map's respect for cities and villages, as well as the total number of split pieces for counties; cities, villages, towns, and all municipalities combined; and wards. *See infra* Part II-A to Part II-C.

D.   **The Wright Map's Districts Are Compact.**

Article IV of the Wisconsin Constitution requires assembly districts to "be in as compact form as practicable," Wis. Const. art. IV, § 4, and senate districts to be "of convenient contiguous territory," *id.* § 5. As this Court noted, the compactness requirement "is set out in broad terms, the interpretation of which may lead to difficult questions and require a complex balancing of interests." Op. ¶14. In contrast to the Constitution's clear mandate of "contiguous territory," compactness is "required only when it is practicable" and thus cannot be read as a crisp "constitutional imperative for all districts." *Id.* ¶20; *see also Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis. 1982) (three-judge court) (because the compactness criterion is "secondary" and "subservient" to both "population equality" and "political subdivision boundaries," districts "should be reasonably, though not perfectly, compact").

This Court has generally defined compactness "as 'closely united in territory,'" but "has never adopted a particular measure of compactness." Op. ¶66 (citations omitted). Perhaps no single metric can capture the framers' goals in requiring "practicable" compactness—namely, to "prevent gerrymandering" and to make districts "more geographically cohesive" and

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thus respectful of community interests. *Id.* ¶35 (internal quotation marks omitted).

As Dr. DeFord more fully describes in his expert report, the Wright Map's assembly districts are compact, and its senate districts are convenient. Dr. DeFord employs three widely accepted formulae for assessing the compactness of a single district—Polsby-Popper, Reock, and Convex Hull—and reports scores on all three metrics for all 99 assembly and 33 senate districts in the Wright Map. *See* DeFord Rpt. 13; *see also, e.g.,* *Cooper v. Harris*, 581 U.S. 285, 311 (2017) (relying on the Polsby-Popper and Reock metrics); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 818 (Pa. 2018) (same); *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 646 (Fla. 2012) (relying on the Reock and Convex Hull metrics); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 199 N.E.3d 485, 501 (Ohio 2022) (relying on the Polsby-Popper, Reock, and Convex Hull metrics); *Matter of 2022 Legislative Districting of State*, 282 A.3d 147, 183 (Md. 2022) (relying on, *inter alia*, the Polsby-Popper, Reock, and Convex Hull metrics).

All three metrics are grounded in plane geometry. The Polsby-Popper score focuses on a district's jaggedness by comparing its area to the length of its perimeter. The Reock score focuses on a district's elongation by comparing its area to the area of the smallest circle that could circumscribe the district. And the Convex Hull score focuses on a district's indentation by comparing its area to the area that would be encompassed by stretching an imaginary rubber band around the district's perimeter. For each metric, a circle, being neither jagged nor elongated nor indented, receives a perfect score.

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Dr. DeFord compared the Wright Map to the 2022 Map, analyzing the assembly and senate districts' minimum and mean scores on all three metrics. DeFord Rpt. 15. As the six graphs in Figure 1 below show, the Wright Map consistently outscores the 2022 Map, which itself had been deemed as compact "as practicable." *Johnson III*, 401 Wis. 2d 198, ¶70 & n.14. For each metric, a higher number is better, and thus the fact that the Wright Map's green lines generally lie above the 2022 Map's red lines shows the Wright Map's superior compactness.

Figure 1: Polsby-Popper, Reock, and Convex Hull Compactness Scores for the 2022 and Wright Maps for the Assembly and the Senate
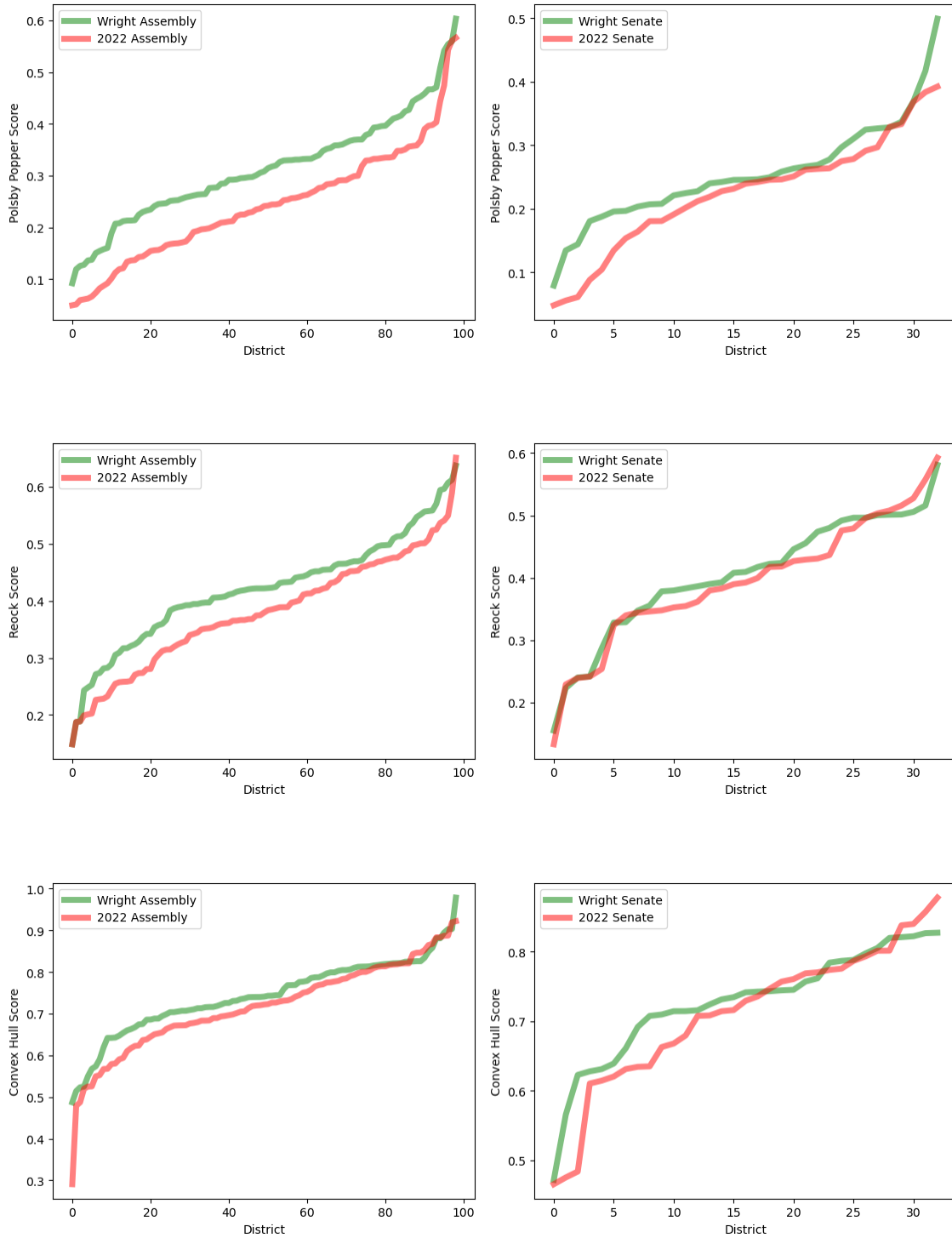
In addition, Dr. DeFord found that the Wright Map outperformed the 2022 Map using a compactness measure that applies to the entire plan, rather than to individual districts: the Cut Edges metric. Dr. DeFord reports a more than 22% improvement in the assembly map (as block-based Cut Edges decline from 19,196 to 14,929) and a more than 18% improvement in the senate map (from 10,785 to 8,772). DeFord Rpt. 14–15.

Thus, as described by Dr. DeFord, the Wright Map easily satisfies Wisconsin's constitutional compactness requirements.

E. The Wright Map's Districts Satisfy All Numbering and Nesting Requirements.

The Wisconsin Constitution and Statutes also require that assembly districts "be 'nested' within a senate district—that is, 'no assembly district shall be divided in the formation of a senate district'"—and that there be "'33 senate districts, each composed of 3 assembly districts.'" Op. ¶65 n.27 (quoting Wis. Const. art. IV, § 5, and Wis. Stat. § 4.001); *see* Wis. Stat. § 4.009.

The Wright Map satisfies these requirements. It divides Wisconsin into 33 single-member senate districts, each composed of three undivided single-member assembly districts, with districts numbered in a regular series. DeFord Rpt. 16.

F. The Wright Map's Districts Comply with the Equal Protection Clause and the Voting Rights Act.

Any remedial map must also "comply with the Equal Protection Clause and the Voting Rights Act of 1965." Op. ¶67 (citing *Wis. Legis. v. Wis. Elections Comm'n,* 595 U.S. at 401). Under the Fourteenth Amendment's Equal Protection Clause, U.S. Const. amend. XIV, § 1, a district is presumptively unconstitutional and thus subject to strict scrutiny as a racial gerrymander if "race was the predominant factor motivating the

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… decision to place a significant number of voters within or without [the] district." *Miller v. Johnson,* 515 U.S. 900, 916 (1995); *accord Cooper v. Harris*, 581 U.S. at 293. And Section 2 of the Voting Rights Act of 1965, as amended (the "VRA"), prohibits districting maps that dilute citizens' voting strength on account of race or membership in a language minority group. 52 U.S.C. § 10301(a).

The Wright Map satisfies these federal-law requirements. As an initial matter, the only districts in Wisconsin that contain sizable minority populations are in Milwaukee County, mostly in the city of Milwaukee—Senate Districts 3, 4, and 6, and Assembly Districts 8 to 12 and 16 to 18. *See Johnson II*, 2022 WI 14, ¶48; DeFord Rpt. 16. Senate Districts 3, 4, and 6 are also three of the four senate districts (with nested assembly districts) that consisted entirely of contiguous municipal wards and therefore did not require a remedy. *See supra* Part I-A. Accordingly, those districts are completely unchanged from the districts in the 2022 Map that this Court adopted in *Johnson III* and that were used for the 2022 primary and general elections. *Johnson III*, 2022 WI 19, ¶¶3, 73. In the nearly two years since this Court ordered those districts into effect, not a single Wisconsin citizen has even attempted to challenge them, in state or federal court, as racially motivated or as racially discriminatory in purpose or effect.

Indeed, the Court in *Johnson III* credited the Legislature's statement that the 2022 Map tracked the Milwaukee area's "unique geography and community characteristics" and concluded that the 2022 Map was "indisputably race neutral, supported by the expert testimony and evidence," and fully complied with both the Equal Protection Clause's prohibition against racial gerrymandering and the Voting Rights Act's prohibition against minority vote dilution. *Johnson III*, 2022 WI 19, ¶¶3, 48,

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59. The Court credited the Legislature's statement that the 2022 Map "utilized 'race-neutral criteria' to draw districts in the Milwaukee area, as it did for all other citizens regardless of race in the remainder of the state." *Id.* ¶48. And the Court likewise took no issue with the Legislature's statement that its race-neutral 2022 Map "compl[ied] with the VRA" and provided minority voters "'equal political opportunity.'" *Id.* ¶48 n.8 (citation omitted); *see id.* ¶58 & n.11 (explaining that adding another majority-Black district would result in supra-proportional representation given the Black percentage of the state's voting-age population); *see also id.* ¶¶52–59 (explaining the 2022 Map's compliance with the Voting Rights Act).

Importantly, the Wright Map leaves the Milwaukee-area districts unchanged not for any race-based reason but simply because the state-constitutional violation being remedied in this case is noncontiguity and these senate districts are among the only ones in the entire state formed solely from contiguous municipal wards. For the same race-neutral reason (that they contain no noncontiguous municipal wards), the Wright Map also leaves completely untouched from the 2022 Map five other districts in Milwaukee County—Senate District 7, Assembly District 7, Assembly District 19, Assembly District 20, and Assembly District 21—all of which are between 65% and 81% non-Hispanic white in voting-age population. DeFord Rpt. 17.

* * *

In sum, the Wright Map clearly satisfies every mandatory districting requirement under Wisconsin law and federal law.

II. The Wright Map Excels on Traditional Districting Criteria Commonly Considered by Courts.

In its December 22 decision, the Court also stated that it would consider traditional districting criteria that, although not constitutionally or

statutorily mandated, are nonetheless commonly considered by courts tasked with adopting remedial redistricting maps. *See* Op. ¶¶62, 68. The Court expressly mentioned two such criteria: reducing municipal splits and preserving communities of interest. *Id.* ¶68. In addition to those two criteria, the Wright Petitioners also address below two other traditional districting criteria: reducing county splits and minimizing ward splits.

A. Reducing County Splits

Although the Court expressly mentioned "reducing municipal splits" as a traditional districting criterion that courts often consider, counties are at least as important in Wisconsin legislative districting. In the Constitution's express "bounded by" requirement, counties are listed before towns and wards; and cities and villages (incorporated municipalities) are not mentioned at all. *See State ex rel. Att'y Gen. v. Cunningham*, 81 Wis. 440, 522, 51 N.W. 724, 742 (1892) (Lyon, C.J., concurring) ("The county is the larger and more important division, and accordingly is first named. Under familiar and elementary rules of construction, it should first be regarded in making the apportionment …."). Dating back to 1892, this Court has repeatedly cited the importance of counties for legislative-districting purposes. *See id.* at 515, 51 N.W. at 740 (Pinney, J., concurring) (discussing "the constitutional rule preserving the territorial integrity of counties in the apportionment of the state into assembly districts"); *id.* at 526, 51 N.W. at 743 (Lyon, C.J., concurring) (decrying "the evils of county dismemberment").

The Wright Map excels in preserving the territorial integrity of counties. Some county splits are inevitable because 25 counties are larger than the ideal population of an assembly district and 6 counties are larger than the ideal population of a senate district. *See supra* page 20. But the

Wright Map's assembly districts split only 47 counties, while leaving Wisconsin's 25 other counties fully intact. And it divides those 47 counties only 153 times. This compares favorably with the 2022 Map, DeFord Rpt. 18, the 2022 Governor's map (selected by the *Johnson II* Court), and the 2011 Map, as shown in Table 2. Likewise, the Wright Map's senate districts split only 37 counties, while leaving Wisconsin's 35 other counties fully intact. And it divides those 37 counties only 74 times. This too compares favorably with prior maps, as shown in Table 2.

Table 2: County Splits

Map	Assembly		Senate	
	Splits	Number of Times Split	Splits	Number of Times Split
Wright Map	47	153	37	74
2022 Map	53	159	42	73
2022 Gov. Map	53	177	45	92
2011 Map	58	171	46	84

B.   Reducing Municipal Splits

As the Court noted in its December 22 decision, "reducing municipal splits" is another traditional districting criteria that courts routinely consider. The Court explained that "Article IV, Section 4's 'bounded by' requirement refers to towns," but not "to city or village boundaries, or 'municipal' boundaries in general." Op. ¶68 n.29. Therefore, although the Constitution does not mandate reducing municipal splits, the Court considers "the number of municipal splits when evaluating maps." *Id.* (citing *Johnson III*, 2022 WI 19, ¶69).

The Wright Map does well in preserving municipalities generally and specifically in avoiding splits of towns—the one type of municipality expressly mentioned in the Wisconsin Constitution's legislative-districting provisions. Tables 3 and 4 below show—for cities, villages, towns, and all

three types of municipalities combined—the number of split municipalities and the number of times they are split, for both the Wright Map and the same series of prior maps. The Wright Map's improvements over the earlier maps—especially as to towns—are evident.

Table 3: Municipality Splits—Assembly

Map	All Municipalities		Cities		Villages		Towns	
	Splits	Number of Times Split	Splits	Number of Times Split	Splits	Number of Times Split	Splits	Number of Times Split
Wright Map	52	89	23	54	14	18	15	17
2022 Map	52	83	25	55	11	12	16	16
2022 Gov. Map	115	181	42	89	23	28	50	64
2011 Map[9]	67[10]	101	28	56	9	11	30	34

Table 4: Municipality Splits—Senate

Map	All Municipalities		Cities		Villages		Towns	
	Splits	Number of Times Split	Splits	Number of Times Split	Splits	Number of Times Split	Splits	Number of Times Split
Wright Map	34	52	15	29	11	13	8	10
2022 Map	31	38	17	24	6	6	8	8
2022 Gov. Map	76	95	31	46	13	14	32	35
2011 Map	46[11]	54	21	27	7	7	18	20

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[9] The tables' 2011 figures come from the statute establishing the 2011 Map and the judicial opinion modifying it. 2011 Wis. Act 43 (codified at Wis. Stat. §§ 4.009, 4.01–4.99 (2012)); *Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840 (E.D. Wis. 2012) (three-judge court). These figures may undercount the number of municipal splits in the 2011 Map because it would be hard to discern from a statute's text if a district boundary had divided a city or village along a county line.

[10] In *Johnson III*, this Court described the 2011 Map's assembly districts as creating 78 municipality splits. 2022 WI 19, ¶69.

[11] In dissent in *Johnson II*, Chief Justice Ziegler described the 2011 Map's senate districts as creating 48 municipal splits. 2022 WI 14, ¶151.

C.   Minimizing Ward Splits

The Wright Map is literally perfect in minimizing ward splits. Both its assembly districts and its senate districts split zero of Wisconsin's roughly 7,000 wards.[12] DeFord Rpt. 18.

D.   Preserving Communities of Interest

The Court identified "preserving communities of interest" as a traditional districting criterion that it would consider when adopting a remedial map. Op. ¶68; *see also id.* ¶62. The Court also noted, in discussing contiguity and compactness, that, when districts "are more geographically cohesive," they are "more likely to reflect a reasonably homogeneous slate of interests than districts with scattered pockets of isolated communities." *Id.* ¶35.

Defining when a territorial community has "some common thread of relevant interests" is not easy. *Miller v. Johnson*, 515 U.S. at 920. In the 117th Congress, legislation passed the House that defined a community of interest as "an area with recognized similarities of interests, including but not limited to ethnic, racial, economic, tribal, social, cultural, geographic or historic identities," and further noted that the term could "include political subdivisions such as counties, municipalities, tribal lands and reservations, or school districts, but shall not include common relationships with political parties or political candidates." For the People Act of 2021, H.R. 1, 117th Cong. § 2403(a)(4) (2021). And a leading scholar of redistricting law has

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[12] Using the August 2021 Redistricting Dataset that the Legislative Technology Services Bureau (LTSB) created, it could appear that a handful of noncontiguous municipal wards in the Wright Map are split. But that is a mirage created by the LTSB's assignment of an erroneous municipal-ward number to certain Census blocks. *See generally* Joint Stipulation & Appendix A (filed Dec. 30, 2023, docketed Jan. 2, 2024). The parties have stipulated and agreed not to count these ward fragments as ward splits when evaluating proposed remedial maps. *See* Joint Stipulation ¶8.

defined a territorial community of interest in both objective and subjective terms, resting on both shared interests and a feeling of communal affiliation: A territorial community of interest is "(1) a geographically defined group of people who (2) share similar social, cultural, and economic interests and (3) believe they are part of the same coherent entity." Nicholas O. Stephanopoulos, *Redistricting and the Territorial Community*, 160 U. PA. L. REV. 1379, 1430 (2012).

As is more fully described in the accompanying reports of Dr. DeFord and Dr. Weichelt, the Wright Map preserves several different types of communities of interest.

First, as shown above, the Wright Map's assembly and senate districts are highly respectful of counties, municipalities, and wards. *See supra* Parts I-C, II-A, II-B, and II-C. With 72 counties, nearly 2,000 municipalities, and about 7,000 wards, Wisconsin's political-subdivision lines provide redistricters with significant guidance regarding the contours of the state's actual communities. *See* Wis. Stat. § 5.15(1)(b) (requiring ward boundaries to "observe the community of interest of existing neighborhoods and other settlements"); *see also id.* § 5.02(25). Thus, respect for communities of interest is primarily achieved by ensuring adherence to the Constitution's mandate to bound assembly districts "by county, … town or ward lines." Wis. Const. art. IV, § 4.

Second, the Wright Map preserves American Indian Tribal communities, which are self-governing sovereign homelands.[13] Of Wisconsin's 11 federally recognized Indian Tribes, 10 have reservations

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[13] Federally recognized Indian Tribes have a government-to-government relationship with the United States, and federal and state laws applicable solely to Indian citizens and their Tribal lands are deemed political, not racial, classifications. *See Morton v. Mancari*, 417 U.S. 535 (1974).

situated entirely within one assembly district (and thus one senate district) in the Wright Map.[14] DeFord Rpt. 19; *see* Weichelt Rpt. 1, 7, 9, 10–11, 24, 26–27. The only exception is the Ho-Chunk Nation, whose Tribal lands are scattered across seven counties and could not be brought into a single reasonably compact district. DeFord Rpt. 19–20; *see also* Weichelt Rpt. 1, 18.

Third, the Wright Map's assembly and senate districts align well with Wisconsin's 421 public-school districts. *See* Wis. Dep't of Pub. Instruction, GIS Open Data Portal, *available at* https://data-wi-dpi.opendata.arcgis. com/. Because Wisconsin has more than 1,800 municipalities but only 421 public-school districts, the latter can help define which municipalities "fit" well in a common legislative district. The Wright Map splits fewer school districts than the 2022 Map according to all three splitting metrics Dr. DeFord examined. DeFord Rpt. 20; *see also* Weichelt Rpt. 1, 5, 7, 12, 29–31.

Fourth, the Wright Map tracks Wisconsin's television markets. An indication that certain counties might belong in the same legislative district is that they share communications networks relevant to politics and government. Given the demise of local newspapers in recent decades, television provides the most important geographically based communications today. Wisconsin contains part or all of eight Designated Market Areas (DMAs): Milwaukee, Green Bay/Appleton, Madison, La Crosse/Eau Claire, Wausau/Rhinelander, Minneapolis/St. Paul (MN),

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[14] These ten Tribes are the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, the Forest County Potawatomi Community, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation, the Menominee Indian Tribe, the Oneida Nation, the Red Cliff Band of Lake Superior Chippewa Indians, the Sokaogon Chippewa Community, the St. Croix Chippewa Indians, and the Stockbridge Munsee Community.

Duluth (MN)/Superior, and Marquette (MI). *See* Nielsen DMA Designated Market Area Regions 2018–2019, *available at* https://thevab. com/storage/app/media/Toolkit/DMA_Map_2019.pdf. Here, too, the Wright Map compares favorably to the 2022 Map according to the metrics Dr. DeFord examined. DeFord Rpt. 20; *see also* Weichelt Rpt. 1, 10–12, 16, 20, 22, 24, 29 (discussing the Wright Map's consistency with television media markets).

Fifth, the Wright Map aligns well with the best recent indicator of subjective feelings of communal affiliation: the communities of interest that Governor Evers's People's Maps Commission distilled based on 1,800 submissions from citizens throughout Wisconsin. Tufts University's MGGG Redistricting Laboratory used cluster analysis to group those 1,800 submissions into 36 specific communities of interest. *See* MGGG Redistricting Lab and OPEN-Maps Coalition, *Communities of Interest Report for Wisconsin People's Maps Commission* 2–38 (Oct. 14, 2021); *see also* People's Maps Commission, *Final Report and Maps* 19–20 (Oct. 2021). Dr. DeFord then analyzed the Wright Map's fidelity to the cores of those 36 communities of interest and found that the Wright Map represented an improvement over the 2022 Map in preserving these community cores. DeFord Rpt. 22; *see* Weichelt Rpt. 5 (discussing importance of People's Maps Commission and MGGG Redistricting Lab's results in understanding Wisconsin communities); *see also* Weichelt Rpt. 2, 11, 15, 17, 21, 24–25, 28–29 (explaining that the Wright Map outperforms the 2022 Map in preserving communities of interest).

Sixth and finally, as the expert report of Dr. Weichelt, a Wisconsin scholar specializing in political geography, demonstrates, the Wright Map's districts would be reasonably cognizable by voters in each of Wisconsin's

regions and communities, as the districts are largely identifiable in terms of familiar, recognizable socio-geographic building blocks. Throughout his report, Professor Weichelt, a lifelong Wisconsinite, takes the reader on a drive across the Badger State, explaining how particular districts, both assembly and senate, would make sense to their constituents and to the legislators who represent them. Weichelt Rpt. 1–2 (outlining methodology and conclusions); *see also id.* at 6–32 (detailing how the Wright Map preserves communities as Wisconsinites live and understand them). In short, the Wright Map's districts are "geographically cohesive" and thus "likely to reflect a reasonably homogeneous slate of interests." Op. ¶35.

III.   The Wright Map Minimizes Partisan Impact and Thus Exemplifies the Principle of Judicial Neutrality.

Importantly, the Wright Map cures the constitutional violations of noncontiguity, fully complies with state and federal districting requirements, and performs exceptionally well on nonmandatory traditional criteria—all while steadfastly remaining politically neutral. A pervasive myth is that in Wisconsin today it is not possible to draw a politically neutral legislative map where seats truly follow votes because Democrats are clustered in densely populated urban centers while Republicans are spread out more evenly across most of the state. *See Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ¶48, 399 Wis. 2d 623, 967 N.W.2d 469 ("*Johnson I*"). The Wright Map shows that is simply not true.

Dr. DeFord explains how it is possible to achieve a map where the votes that citizens cast in future legislative elections will equitably translate into legislative seats—and likely into control of the legislative chambers by the political party whose candidates actually win the most votes statewide. DeFord Rpt. 23. As noted above, Dr. DeFord previously has been recognized for his application of computational methods to evaluating

redistricting plans, and in particular for his ability to provide courts with "a reliable basis to rank the predicted partisan fairness of [map] submissions." *Carter*, 270 A.3d at 473 (Donohue, J., concurring). To be sure, there are also publicly available tools on websites such as "Dave's Redistricting App" and "PlanScore" that provide partisan-fairness scores for maps. These sorts of programs perform a great service by making redistricting accessible to the public. But because these websites attempt to provide generic nationwide scoring methods, they may omit more sophisticated or state-specific methods that an expert like Dr. DeFord can incorporate into an election model. Dr. DeFord's report includes replication code that will allow the Court and its consultants to compare each party's map submission using Dr. DeFord's election model, described below. *See infra* Part II-B-1; *see also* DeFord Rpt. App. B.

A. Courts Apply the Principle of Judicial Neutrality in Remedial Redistricting.

In its December 22 decision the Court appropriately noted that, as "a politically neutral and independent institution," it "will consider partisan impact when evaluating remedial maps," to avoid selecting any remedial map that advantages or privileges "one political party over another." Op. ¶¶69–71. As the Court explained two decades ago in *Jensen v. Wisconsin Elections Board*, 2002 WI 13, 249 Wis. 2d 706, 639 N.W.2d 537, when picking the proposed remedial map "'most consistent with judicial neutrality, … [j]udges should not select a plan that seeks partisan advantage—that seeks to change the ground rules so that one party can do better than it would do under a plan drawn up by persons having no political agenda.'" *Id.* ¶12 (quoting *Prosser*, 793 F. Supp. at 867).

Other state supreme courts have similarly applied this principle of judicial neutrality when adopting remedial maps. *See Carter*, 270 A.3d at 470

(affirmatively equalizing voters' "opportunity to translate their votes into representation" (quotation marks omitted)); *Maestas v. Hall*, 274 P.3d 66, 76 (N.M. 2012) (demanding a remedial map "conform[ing] to the principle of judicial independence and neutrality"); *id.* at 80 (purposefully avoiding "political advantage to one political party and disadvantage to the other"); *Peterson v. Borst*, 786 N.E.2d 668, 673 (Ind. 2003) (requiring court-ordered redistricting remedies to "be judicial, not political"); *Burling v. Chandler*, 804 A.2d 471, 483 (N.H. 2002) (rejecting redistricting plans with skewed "partisan political consequences" (quotation marks omitted)).

And federal courts both within and outside Wisconsin have done likewise. *See, e.g., Baumgart*, 2002 WL 34127471, at *3 (courts exercising their remedial authority should "avoid[] the creation of partisan advantage" (citing *Prosser*, 793 F. Supp at 867)); *Balderas v. Texas*, No. 01CV158, 2001 WL 36403750, at *3 (E.D. Tex. 2001) (three-judge court) (per curiam) (noting that in applying its judicially neutral principles, the court checked its "plan against the test of general partisan outcome," using a partisan fairness analysis "widely relied-upon by political scientists to test plans"), *summarily aff'd*, 536 U.S. 919 (2002); *Good v. Austin*, 800 F. Supp. 557, 566 (E.D. & W.D. Mich. 1992) (three-judge court) (applying neutral principles and assessing maps' "political fairness").

Significantly, this Court further noted in its December 22 decision that "it is not possible to remain neutral and independent by failing to consider partisan impact entirely." Op. ¶71. Quoting *Gaffney v. Cummings*, 412 U.S. 735 (1973), the Court explained that a "'politically mindless approach'" that ignores partisan impact altogether "'may produce, whether intended or not, the most grossly gerrymandered results.'" Op. ¶71 (quoting *Gaffney*, 412 U.S. at 753). The *Gaffney* Court had noted that a state's "voting

records are available precinct by precinct, ward by ward," and that "[i]t would be idle" to contend that taking political impact and electoral data into account in adopting a redistricting map is somehow improper. 412 U.S. at 752–53. "District lines are rarely neutral phenomena," the Court explained. *Id.* at 753. "They can well determine what district will be predominantly Democratic or predominantly Republican, or make a close race likely." *Id.* And the Court then upheld a legislative map in which "virtually every Senate and House district line was drawn with the conscious intent to create a districting plan that would achieve a rough approximation of the statewide political strengths of the Democratic and Republican Parties"—even though doing so apparently led the mapmaker to "'wiggle and joggle' boundary lines to ferret out pockets of each party's strength … [and] follow Connecticut's 'oddly shaped' town lines." *Id.* at 752–53 & n.18.

Consistent with this body of caselaw, the scope of the Court's equitable remedial authority is clear: The Court must ensure that any map it imposes reflects fundamental principles of partisan fairness and majority rule. As the U.S. Supreme Court stated in its seminal 1964 legislative districting case, *Reynolds v. Sims*, 377 U.S. 533 (1964): "Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators…. [T]he democratic ideals of equality and majority rule, which have served this Nation so well in the past, are hardly of any less significance for the present and the future." *Id.* at 565–66.

At a minimum, these ideals require the Court to ensure that a remedial map does not systematically award most of the legislative seats to one political party if another party's candidates earn more votes statewide.

B. **The Wright Map Minimizes Political Impact by Respecting Partisan Symmetry, Majority Rule, and Electoral Responsiveness.**

The Wright Map was designed to treat voters equally and minimize any risk of frustrating majority rule. Specifically, the Wright Map is unlikely to award a majority (much less a supermajority) of legislative seats to a political party whose legislative candidates receive fewer votes statewide than the other major political party's candidates receive in upcoming elections.

To be sure, it will never be possible to design maps that entirely eliminate the risk of an antimajoritarian outcome—with one party gaining (or retaining) control of the Legislature even though its legislative candidates receive fewer votes statewide than do their opponents. But as between two otherwise lawful proposed remedies that satisfy all mandatory districting criteria and reasonably balance other traditional districting principles, the Court should choose the proposed map that minimizes this risk. Anything else would put a judicial thumb on the scale for one political party over the other.

The Wright Map would allow all Wisconsin voters, Republicans and Democrats alike, to equitably translate their voting strength into representation. Under the Wright Map, control of the Legislature will not be driven by the mapmakers or by this Court but instead will rest with the people of Wisconsin. As the tides of public opinion and voting behavior ebb and flow from year to year, the Wright Map would enable partisan control of both legislative chambers to freely shift to reflect the will of the people. With the Wright Map, starting this November, party control of the Wisconsin Legislature will no longer be preordained.

1.   The Wright Map Is Symmetric and Majoritarian.

Dr. DeFord's analysis shows that the Wright Map treats voters of both parties equally and allows the will of the voters to determine legislative outcomes. In other words, the Wright Map is both symmetric and majoritarian and thus its adoption by this Court would fully comport with the principle of judicial neutrality.

Those who advocate for fair maps are often accused of seeking proportional representation. But proportionality and symmetry are not the same thing. A *symmetrical* result simply demands that the two parties' voters be treated equally. DeFord Rpt. 23. Although there are many metrics that purport to measure a redistricting map's degree of partisan symmetry, most of them are just summary statistics derived from the map's "seats-votes curve." DeFord Rpt. 24. The seats-votes curve is a plot of points where the horizontal dimension (the x-axis) shows one political party's percentage of the total statewide vote and the vertical dimension (the y-axis) shows the party's percentage of legislative seats.[15] A *proportional* outcome would be not a "curve" but rather a straight line, climbing at a 45-degree angle (a slope of 1), so that the seats percentage would perfectly match the vote percentage. Proportionality is a form of symmetry but is decidedly *not* one that the law requires or that is likely to flow from a single-member-district, winner-take-all system like that in Wisconsin, or in any other State. Importantly, the Wright Petitioners are *not* advocating that a remedial map must produce proportional representation.

Instead, the Wright Petitioners believe a neutral remedial map should achieve partisan symmetry—treating voters of both parties equally.

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[15] For more detail about seats-votes plots and curves, see pages 50 to 93 of the Petition to Commence an Original Action, *Wright v. Wisconsin Elections Commission*, No. 2023AP1412-OA (Wis. Aug. 4, 2023).

In a symmetrical map, the seats-votes curve showing Democratic percentages of seats and votes should resemble the same map's seats-votes curve showing Republican percentages of seats and votes. DeFord Rpt. 25. If the two curves roughly align, the map is symmetric and fair to both parties' voters; if not, the map is asymmetric and advantages or privileges "one political party over another." Op. ¶¶70–71.

And what matters most—especially in a hyper-competitive state like Wisconsin—is how symmetric the curves are near the *center* of the graphs, where the two major parties have similar vote shares. Deford Rpt. 23. In Wisconsin, where not a single statewide candidate has garnered even 56% of the vote since 2010,[16] it simply doesn't matter whether Democrats and Republicans would get similar numbers of seats if their candidates carried 80% of the statewide vote, because there is no reason to believe either party will do that during the lifetime of this remedial redistricting map. DeFord Rpt. 23–24. But for purposes of ensuring that a remedy is judicially neutral, it matters greatly whether Democrats will get roughly the same number of seats with 52% of the statewide vote that Republicans would get if *they* instead won 52% of the statewide vote. DeFord Rpt. 23.

Dr. DeFord's seats-votes curves demonstrate clearly that the 2022 Map was massively skewed to favor Republicans and disfavor Democrats, and that the Wright Map largely eliminates that skew. Dr. DeFord plotted every statewide general election from 2012 to 2022—for offices ranging from President and U.S. Senator to Governor and State Treasurer. DeFord Rpt. 28–29. In each of these elections, the same pair of candidates, both of whom are typically well known, well funded, or both, face each other in every one

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[16] *See* Wis. Elections Comm'n, Elections Results Archive, *available at* https://elections.wi.gov/elections/election-results/results-all.

of the state's roughly 7,000 wards. DeFord Rpt. 28. This uniformity of candidates and campaigns across all wards promotes evenhanded comparisons and statewide analyses. DeFord Rpt. 28.

Dr. DeFord began each curve with a point representing the Democratic candidate's share of the statewide major-party vote (for example, President Biden's 50.32%) and the percentage of districts carried by that same candidate (for example, President Biden carried about 35% of assembly districts and 33% of senate districts under the 2022 Map). DeFord Rpt. 29. To account for data from all 99 assembly and 33 senate districts, Dr. DeFord then analyzed how much better (or worse) the candidate would have had to perform, across every ward in the state, to pick up (or lose) one additional district, two additional districts, etc., and thus drew for that election a staircase-like approximation of a seats-votes curve based solely on district-level data from that one statewide general election. DeFord Rpt. 25–26. He then overlaid onto a single graph the seats-votes curves for all 19 statewide general elections since 2012—three for President, four for U.S. Senator, and three each for Governor, Attorney General, Secretary of State, and State Treasurer. DeFord Rpt. 34. And he did this for the 2022 Map's assembly districts and senate districts, and then for the Wright Map's assembly districts and senate districts. DeFord Rpt. 34. The results are depicted below in Figure 2.

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Figure 2: Seats-Votes Curves for Assembly (top row) and Senate (bottom) Under the 2022 Map (left column) and the Wright Map (right) Based on 19 Statewide General Elections from 2012 to 2022
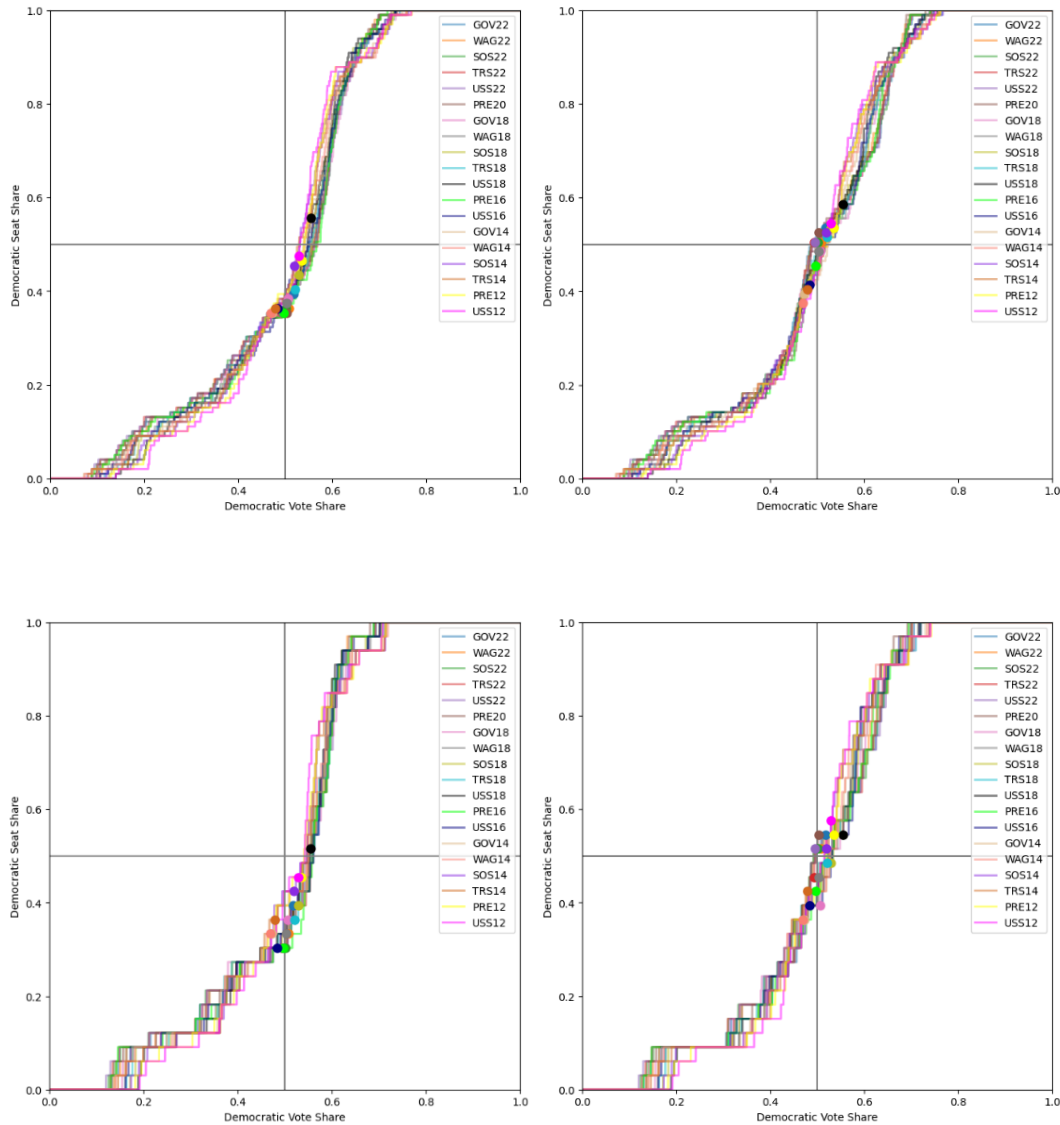
Dr. DeFord's seats-votes curves based solely on these statewide general elections show that in a tied election under the 2022 Map the Democratic candidates would have carried between 19 and 29 fewer assembly districts and between 5 and 13 fewer senate districts than Republicans would have carried. DeFord Rpt. 33. And in most elections during this period, to capture a majority of assembly seats or senate seats under the 2022 Map, Democrats would have had to win at least 55% of the statewide vote. DeFord Rpt. 33. That is partisan asymmetry.

By contrast, under the Wright Map, either political party might win a majority of seats in either chamber if the statewide vote were tied. DeFord Rpt. 34. And that means that neither party would need to win a huge (and thus improbable) majority of the vote to potentially carry a majority of legislative seats. DeFord Rpt. 34–35. That is partisan symmetry.

But Dr. DeFord's analysis did not stop there. His analysis added the kinds of nuanced considerations that publicly accessible off-the-shelf redistricting software does not typically include. Dr. DeFord analyzed actual state-legislative elections in Wisconsin, because state-legislative seat totals should reflect votes in elections for state-legislative offices. DeFord Rpt. 39. He analyzed the likely impact of state-legislative incumbents seeking reelection because, even after redistricting, most incumbents seek reelection, most benefit from the advantages of incumbency, and in Wisconsin those advantages accrue mostly to Republican incumbents because there are nearly twice as many Republican incumbents as Democratic incumbents due to partisan gerrymandering in the 2011 Map that carried over into the "least change" 2022 Map. DeFord Rpt. 37–38. And Dr. DeFord differentiated the larger advantages that incumbents enjoy when their new constituents are mostly former constituents from the

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smaller incumbency advantage when new districts place incumbents in districts with unfamiliar voters. DeFord Rpt. 38.

Finally, cognizant of the dramatic changes that have shaken Wisconsin politics (and American politics generally) since 2012, and because the remedial maps proposed by parties here are of course for use in *future* elections, Dr. DeFord looked at ongoing trends that appear to be significant and generational. DeFord Rpt. 38–39. These trends include, for example, recent shifts toward Democratic voting in high-education wards in certain Milwaukee suburbs and toward Republican voting in certain rural wards in western Wisconsin. DeFord Rpt. 38. The presence of "repeat" candidates, like Governor Evers in 2018 and 2022, helped Dr. DeFord calibrate these trends. DeFord Rpt. 39. Statistical analysis aside, no observer of current-day Wisconsin politics would be shocked to learn, for example, that the city of Mequon in southern Ozaukee County and Trempealeau County in western Wisconsin's Driftless Area are moving in opposite directions politically. *Cf.* Weichelt Rpt. 13–14, 30. But Dr. DeFord has quantified those shifts, and many others around the state, to best reflect likely outcomes in specific state-legislative districts in 2024 and 2026, when the Court-adopted remedial map will actually be in effect. DeFord Rpt. 39–40.

Dr. DeFord's analysis shows that the dramatic contrast between the 2022 Map's partisan asymmetry and the Wright Map's partisan symmetry becomes even starker when these more-nuanced factors are considered. DeFord Rpt. 41–42. Figure 3 below shows seats-votes curves based on Dr. DeFord's additional analysis using his election model that accounts for all the above-described Wisconsin-specific factors, again for both Maps (2022 and Wright) and both legislative houses (Assembly and Senate). DeFord Rpt. 41–42. In a future statewide tied election—where votes cast specifically

for state-legislative offices are evenly divided statewide between Democrats and Republicans—the 2022 Map would have preordained large Republican legislative majorities in both chambers (roughly a 27-seat Republican advantage in the Assembly and a 9-seat Republican advantage in the Senate), while the Wright Map, based on an identical analysis, would most likely generate a 52-to-47 or closer division in the Assembly (with perhaps the Democrats holding a slight advantage) and an 18-to-15 or closer division in the Senate (with perhaps the Republicans holding a slight advantage). DeFord Rpt. 40.

That is partisan symmetry. That is majority rule. That is minimizing needless political impact. And, if this Court adopts the Wright Map, that is judicial neutrality.

Figure 3: Seats-Votes Curves for Assembly (top row) and Senate (bottom) Under the 2022 Map (left column) and the Wright Map (right) Based on Dr. DeFord's Wisconsin Legislative-Election Model
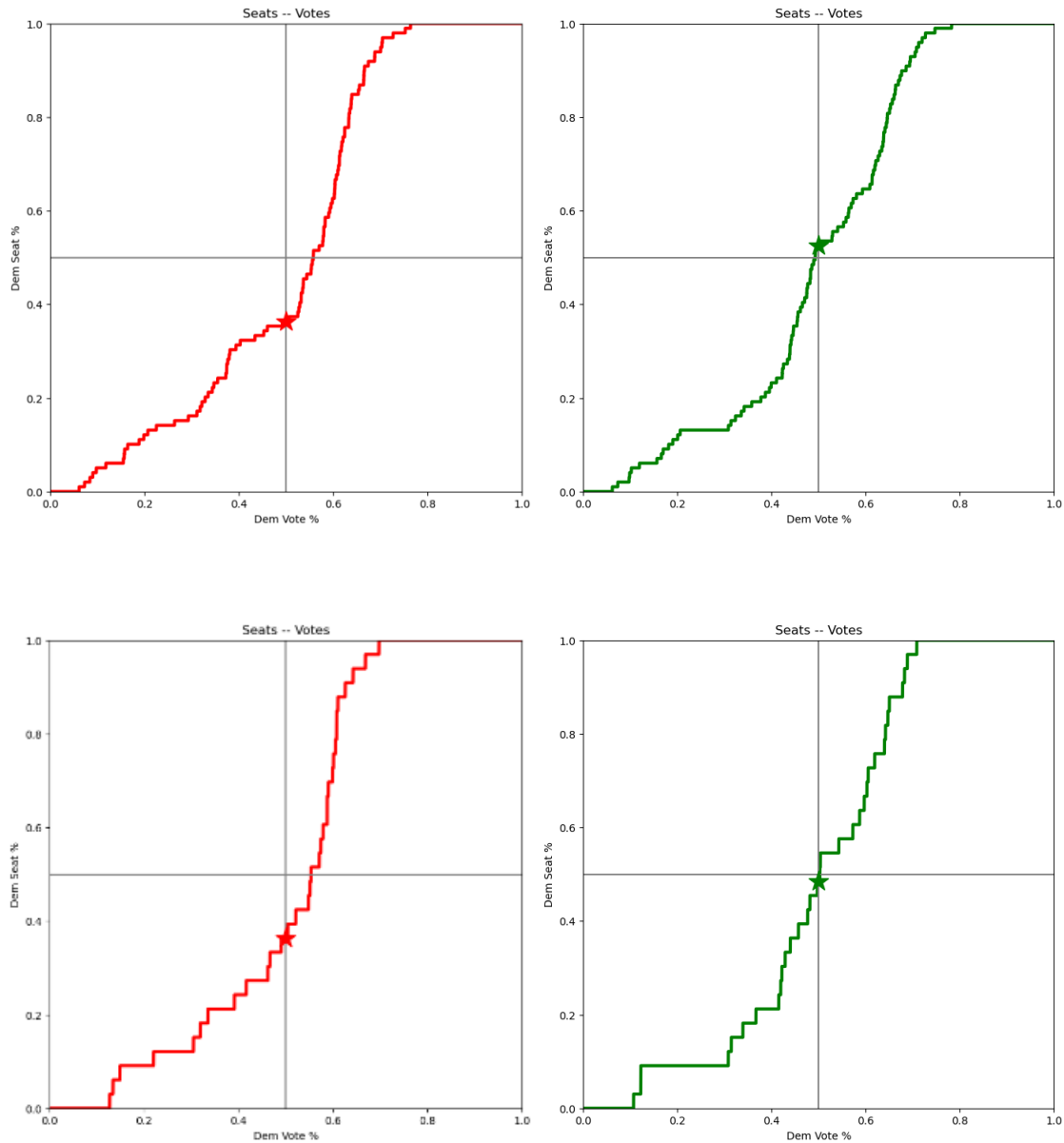
Dr. DeFord has not only supplied these seats-votes curves, as well as partisan-fairness metrics summarizing their key properties, for the 2022 Map and the Wright Map. DeFord Rpt. 40, 43. He also has provided the Court and its consultants, Dr. Grofman and Dr. Cervas, with the raw data and replication code that will allow them to run exactly the same analyses on all other proposed remedial maps, to facilitate direct, unbiased comparisons. DeFord Rpt. App. B.

2. The Wright Map Is Responsive to the Will of the Electorate.

The Wright Map also excels in placing large numbers of Wisconsinites in assembly and senate districts that are truly competitive, where the voters rather than the line-drawers can determine the winners. This in turn means that the Wright Map as a whole will be highly responsive to the electorate.

Without a reasonable number of fair, tightly competitive districts, legislative elections lose their meaning. *See Reynolds v. Sims*, 377 U.S. at 565 ("Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will."); *Maestas v. Hall*, 274 P.3d at 80 ("competitive districts allow for the ability of voters to express changed political opinions and preferences"); *Hall v. Moreno*, 270 P.3d 961, 973 (Colo. 2012) (en banc) (holding that "consideration of competitiveness is consistent with the ultimate goal of maximizing fair and effective representation").

The Wright Map contains no fewer than 15 assembly districts and 5 senate districts that, based on Dr. DeFord's election-forecasting model, are expected to feature highly competitive elections, with both parties' legislative candidates garnering between 47% and 53% of the vote. DeFord Rpt. 44. And neither party has enough "safe" seats to ensure control of either chamber. DeFord Rpt. 44. So neither party can control even one

house of the Legislature without first winning over voters in competitive districts. DeFord Rpt. 44. Thus, in the Wright Map, the electoral responsiveness generated by competitive districts goes hand in hand with partisan symmetry, majority rule, and neutrality. In short, the Wright Map's responsiveness to the vote will help ensure—for the first time in more than a decade—that the Wisconsin Assembly and Senate "deriv[e] their just powers from the consent of the governed." Wis. Const. art. I, § 1.

> 3.   **The Wright Map Can Fully Benefit Wisconsin This Year, Without Delay.**

Finally, the benefits of the Wright Map can accrue to the people of Wisconsin in this year's election cycle and thus ensure that they have fair and effective representation in the 2025–2026 Legislature, consistent with principles of neutrality and majority rule. As for the Assembly, current Representatives would serve out the entirety of their two-year terms, and elections would be held this fall in all 99 districts. Under the Wright Map, the most likely outcome is that the Assembly whose members take office in January 2025 would faithfully reflect the composition of the November 2024 electorate. DeFord Rpt. 41.

As for the Senate, elections would be held in the Wright Map's 16 even-numbered districts in November 2024; and the winning candidates would replace the current Senators elected (mostly in November 2020) from the 2011 Map's 16 even-numbered districts. The 17 current Senators elected from the 2022 Map's odd-numbered senate districts in November 2022 would serve out the entirety of their four-year terms, and elections would be held in the Wright Map's 17 odd-numbered senate districts in November 2026. *See* Wis. Stat. § 17.03(4)(b) (rendering a legislative office vacant when the "incumbent ceases to be a resident of … the district *from which elected*"

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(emphasis added)); *see also* 71 Wis. Att'y Gen. Op. 157, 161 (1982) (explaining that redistricting alone creates no senate vacancies).

Although the Wright Map does not rely on a "least change" or "core retention" approach, most Democratic Senators and most Republican Senators currently live in a new senate district bearing the same number as the district from which the Senator was most recently elected. DeFord Rpt. 41. Moreover, all 33 of the Wright Map's senate districts "consist[] of some or all of the same counties as the parallel predecessor districts" under the 2022 Map. *Johnson I*, 2021 WI 87, ¶86 n.13 (Hagedorn, J., concurring). In *Johnson I*, Justice Hagedorn lauded the remedial map that this Court ordered into effect in 1964 because 31 of 33 senate districts met this standard. *See id.* (citing *State ex rel. Reynolds v. Zimmerman*, 23 Wis. 2d 606, 617–18, 128 N.W.2d 16, 23 (1964); Wis. Stat. § 4.02 (1963–1964)). Here, 33 of 33 districts do so.

Under the Wright Map, the people of Wisconsin would not have to wait until the 2026 elections are resolved and members of the 2027–2028 Legislature take office before enjoying fair and effective representation in the Senate. Due in large part to partisan bias in the 2022 Map, the 17 holdover Senators from odd-numbered districts include 12 Republicans and only 5 Democrats. DeFord Rpt. 41. But the 16 new even-numbered senate districts in the Wright Map contain many districts that either lean Democratic or are highly competitive. DeFord Rpt. 41. So it would be reasonably likely that, come next January, whichever party has garnered the most votes in recent senate elections—Republican or Democratic—would have an excellent chance of controlling the chamber, if this Court adopts the Wright Map.

CONCLUSION

The Court should safeguard the constitutional rights of all Wisconsin voters by adopting the Wright Map and issuing an injunction requiring the Wisconsin Elections Commission to use the Wright Map in legislative elections in 2024 and thereafter.

Dated: January 12, 2024   Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this Brief is 10,931 words.

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